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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1937.

No. 293

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, Local No. 73,

Appellants,

vs.

E. G. SHINNER & COMPANY, Inc.,

Respondent.

BRIEF OF THE RESPONDENT

WALTER L. GOLD,
Counsel for Respondent.

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Respondent.

BRIEF OF THE RESPONDENT

NATURE OF CASE.

The respondent, a Delaware corporation, operating five retail meat markets in the City of Milwaukee, commenced this action on April 11, 1935, in the United States District

Court for the Eastern District of Wisconsin, by bill of complaint (R. 29) to temporarily and permanently enjoin the appellants from picketing its retail meat markets in the city of Milwaukee, Wisconsin. Defendants answered and cross-complained for injunctional relief (R. 38). Hearing was had and testimony taken and a *temporary* injunction granted respondent by the United States District Court for the Eastern District of Wisconsin, which, on appeal was affirmed by the Circuit Court of Appeals for the Seventh Circuit (82 Fed. (2nd) 68). Thereafter the case was tried on its merits and the court found in favor of the respondent and made findings of fact and conclusions of law, to which appellants have never taken exception (R. 6 to 8 inclusive). Decree was entered granting writ of permanent injunction (R. 9, 10). On appeal to the Circuit Court of Appeals the judgment of the District Court was affirmed (opinion of the Circuit Court of Appeals filed May 13, 1937, R. 25-26). The Circuit Court of Appeals held on the authority of *United Electric Coal Co. vs. Rice,* 80 Fed. (2d) 1, (Certiorari denied by this court on March 2, 1936, 297 U. S. 714), that the case presented no labor dispute. Hence the Norris-LaGuardia Act was no bar to the right of the court to issue the injunction, the court holding that the issues involved being practically identical with those on the former appeal, the decision of the first appeal became "the law of the case" based on the Circuit Court of Appeal's interpretation of the Norris-LaGuardia Act, not to be changed unless clearly erroneous and unsound, and being convinced that their holding in the former case was not in error, affirmed the present injunction on May 13, 1937.

SUMMARY OF ARGUMENT.

I.

The findings of fact, to which no exception was ever taken, are sustained by the evidence, and the cases of *Senn vs. Tile Layers Protective Union, Local No. 5,* 300 U. S. ....., 81 L. Ed. 829, 57 Sup. Ct. 857, and *American Furniture Co. vs. I. B. of T. C. etc., Local No. 200,* 222 Wis. 338, 268 N. W. 250, 106 A. L. R. 335, are not contrary to the respondent's position on this appeal.

II.

Appellants' attempt to coerce respondent to recognize them as the sole agent of respondent's employees, *none of whom appellant union represents,* to the exclusion of the agency which the respondent's employees have unanimously chosen, is unlawful and an effort to compel respondent to unlawfully invade the "full freedom" of choice in selecting the bargaining agent which is guaranteed to employees as a matter of public policy by Section 2 of the Norris-La-Guardia Act (29 U. S. C. A. 102) and Section 268.18 of the Wisconsin Statutes, and picketing to accomplish such unlawful purpose is an unlawful invasion of respondent's rights and will be enjoined.

International Alliance, etc. Local vs. Rex Theatre Corp., 73 Fed. (2d) 92 (C. C. A. 7th).

Texas & N. O. R. Co. vs. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, 50 Sup. Ct. 427.

Trustees of Wisconsin State Federation of Labor vs. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N. W. 56.

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Roraback vs. Motion Picture, etc., 140 Minn. 481, 168 N. W. 766, 169 N. W. 529.

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Hughes vs. Kansas City Motion Picture, etc., 282 Mo. 304, 221 S. W. 95.

Donnelly Garment Co. vs. International Ladies' Garment Workers Union, 20 Fed. Supp. 767 (August 1937) (Motion to dismiss for the reason that the Norris-LaGuardia Act applies depriving court of jurisdiction denied December 31, 1937, by majority of a court of three judges).

III.

No "labor dispute" within the meaning of Section 13 of the Norris-LaGuardia Act exists in this case.

United Electric Coal Co. vs. Rice, 80 Fed. (2d) 1, (Certiorari denied 297 U. S. 714).

29 *U. S. C. A. Section* 113.

Lauf vs. E. G. Shinner & Co., 82 Fed. (2d) 68.

Scavenger Service Corp. vs. Courtney, 85 Fed. (2nd) 825.

H. R. Report 669, 72d Congress.

H. R. Report 163, 72d Congress.

No "labor dispute" can arise out of the refusal of the employer to do that which is unlawful.

29 *U. S. C. A. Section* 102.

Ebert vs. Poston, 266 U. S. 548, 45 Sup. Ct. 188.

Fleischmann Const. Co. vs. U. S., 270 U. S. 349, 46 Sup. Ct. 284.
Price vs. Forrest, 173 U. S. 410, 19 Sup. Ct. 434.
Hellmich vs. Hellmich, 276 U. S. 233, 48 Sup. Ct. 244.

Congress, in declaring as a rule of public policy the right of the employee to be free from interference, did not intend to restrict the power of the courts to suppress such interference by injunction, and such provisions applying only to cases involving labor disputes have no application here.

Duplex Printing Press Co. vs. Deering, 254 U. S. 443, 41 Sup. Ct. 172, 178.

IV.

The construction of the Norris-LaGuardia Act contended for by appellants would render the act a violation of Article III of the United States Constitution and the due process clause of the Fifth Amendment.

ARGUMENT.

I.

Finding of fact 5 that the appellants made demand upon the respondent that it require its employees, as a condition of their continued employment, to become members of its union, and that respondent had notified its employees that they were free to join it if they so desired, but that the employees had declined and refused to join the appellant union, which is not the union chosen by any of its employees,

is amply supported by the evidence. (Testimony of E. G. Shinner, R. 40.) This witness testified: "I never told any of my men directly or indirectly they had no right to join the defendant union or what union they should join. I have no objection to the men joining the defendant union if they so desire." The testimony of the vice-president of the respondent is to the same effect, that he had no objection to the employees joining the defendant union if they desired to, and he had not instructed them not to join a union or talked to them at all about the union they should join (R. 43). The testimony of the employee Sokoloski is to the same effect (R. 50). The testimony of Sokoloski, president of the employees' union (R. 50) is that the employees are 100% members of the employees' union; there is no dispute between the association and the employer with reference to wages, hours of labor or working conditions. The employees elected their own bargaining representatives; all the employees were at work and none were picketing. Respondent was indifferent as to which union its employees joined (R. 50).

Appellant mailed to respondent a proposed contract which would have required respondent to employ no one except those supplied by the appellants (R. 45, 46), and threatened, notwithstanding they represented *not one of respondent's employees* to declare and did declare war upon respondent (R. 43), and promptly thereafter started the picketing shown by the photographs received in evidence (R. 43), and commenced assaulting and insulting prospective customers and slandering respondent's products (R. 47, 48, 49, 50, 54). These facts distinguish this case from *Senn vs. Tile Layers Protective Union, Local No. 5,* 300 U. S. ....., 81 L. Ed. 829, 57 Sup. Ct. 857, in which this court said:

> "The picketing was peaceful without violence and without any unlawful act."

American Furniture Co. vs. I. B. of T. C. etc., Local No. 200, 222 Wis. 338, 268 N. W. 250, 106 A. L. R. 335, is not contrary to the judgment in this case, for the reason that in the *American Furniture Company* case the trial court found as a fact a labor dispute did exist, which finding of fact was sustained by a divided appellate court.

Appellants' statement in the first paragraph of the brief that the decree enjoined "all picketing and peaceful persuasion" we submit in view of this evidence is not in accordance with the fact, and if the decree can be given such construction it should be affirmed nevertheless, because appellants were found to have been guilty of repeated assaults and other unlawful acts, and should not be permitted to complain for the first time in this court and say in effect "we repeatedly committed assaults and violence, but only enjoin us from doing these things." The chancellor hearing this case, we submit, was justified in protecting respondent's rights because of the appellants' apparent insistence *not* to peacefully picket and enjoining all picketing by the wrongdoers, and his conclusion that they would not lawfully conduct themselves is supported by the evidence and the inferences to be drawn therefrom.

Finding of fact 6 (R. 7) that the defendants for the purpose of coercing the respondent to require its employees to join and become members of appellants' union and accept it as their bargaining agent and for the purpose of destroying respondent's business in the event respondent refused to yield to appellants' unlawful demands is clearly established by the evidence. Compliance by respondent with the appellants' unlawful demands would have invaded the full freedom of choice in selecting a bargaining agent which is guaranteed to employees as a matter of public policy by Section 2 of the Norris-LaGuardia Act and Section 268.18 of the Wisconsin statutes.

International Alliance, etc., Local vs. Rex Theatre Corp., 73 Fed. (2d) 92, (C. C. A. 7th).

Trustees of Wisconsin State Federation of Labor vs. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N. W. 56.

The evidence recited as to what appellants did, to-wit: mailing the proposed contract to respondent in which it sought to compel respondent to agree to employ only members of its union, none of whom were in the employ of respondent, and then to declare war on respondent if respondent did not sign its proposed written contract, justified the trial court in concluding that the testimony of the witness Lauf, business agent of the appellant union that "it had a dispute with respondent" to-wit: "that they were violating, as to hours and working conditions and so on" was too much in the language of the Act of Congress, and not to be believed because no such dispute was ever before claimed; nor was that apparent effort to claim a labor dispute consistent with the undisputed fact that the defendant union had theretofore mailed the proposed unlawful contract to respondent and said: "If you don't join I will declare war on you" (R. 43), and when respondent replied: "There is nothing I can do about it," the representative of the union said: "All right the war is on," and thereafter committed the assaults established by the testimony and falsely accused the respondent of being unfair to organized labor and prevented patrons and prospective patrons from patronizing its meat markets by molestation, annoyance, threats and intimidation which they would have continued unless restrained by injunction (Finding R. 7, 8).

Appellants refer to these acts in their brief (page 41) "as acts of picketing and persuasion" and argue "if they ever were torts in Wisconsin they certainly are not such today." The testimony taken on the trial and the findings pursuant thereto show that this is not a case of peaceful picketing in a labor dispute. Appellants have by unlawful

assaults and batteries committed in an effort to compel the respondent to violate the law and compel the respondent to force its employees to join appellant's union to which none of respondent's employees belong. They attempted to avoid being restrained by claiming in general language "our union has a dispute with the company. Our dispute is that *they are violating as to hours and working conditions* and so on." (Testimony of Lauf, R. 59.) Later on the same witness testified (R. 62) "the dispute we claim to have with Shinner is because of their refusal to sign the contract, Exhibit B." This witness continues: "Besides the refusal to sign the contract we have another claimed dispute in so far as that members that work for Shinners complained to us that they are working too long hours and not getting enough money at the time." But the trial court with the advantage of seeing the witness was not compelled to believe this sentence, in view of the witness's subsequent testimony in which he could not give a name of such employee, and admitted that *he* personally did not know any; although he boastfully claimed he could get plenty of men who do know, he failed to produce any such testimony (R. 63).

Appellants' contention means that if any group of men or any labor organization *asserts* it has a dispute or controversy with an employer, the Congressional Act deprives the courts of jurisdiction to issue an injunction. We submit Congress could not have intended that. If the Act means that, we submit it would not be valid. The term "labor dispute" is defined (Norris-LaGuardia Act, 29 U. S. C. A. 113 (c)) to include

> "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or condi-

> tions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

Properly construed, we submit, this language means a real bona fide controversy, or one that has some reasonable basis. How could there be a labor dispute in the case at bar when all the employees are members of an organization with which the employer has no dispute or controversy?

Does this language in the Congressional Act, properly construed, mean that it lies within the power of any person by unfounded assertion to "make a labor dispute"? Is it not within the field of fact for a court to determine whether there is such a labor dispute within the meaning of the act under the facts disclosed in this case?

The language of the Norris-LaGuardia Act which states: "* * * regardless of whether or not the disputants stand in the proximate relation of employer and employee," is meant obviously to include those who are assisting or aiding the employees, but cannot be construed to mean an entire stranger, such as the appellants who neither represent nor aid any of the employees.

II.

The only justification which appellants claim for the injury which they seek to inflict upon respondent's business is refusal of the respondent to recognize them as the sole bargaining agent of respondent's employees to the exclusion of the representative which the employees themselves have unanimously selected in the exercise of their own free choice.

Article 14 of the proposed contract required the respondent "to agree not to negotiate with any but the duly elected officers of Local 73 or other authorized members of the same local, and further agree not to make a contract with anyone not affiliated with Local 73."

This contract proposed by appellant, if signed by the respondent would prevent recognition of the bargaining agent which respondent's employees had unanimously selected, and would prevent the making of any contracts, whether of employment or otherwise, between the respondent and its employees, as none of them were members of the appellant union. Appellants were attempting to force and compel the respondent to interfere with the employees' freedom of choice in the selection of a bargaining agent. Neither the respondent nor any of its employees were engaged or involved in a labor dispute with any one. The appellants are seeking to compel the respondent's employees to join appellant union so that it may represent the employees in their dealings with the employer. This would constitute a violation of both the federal and state law if respondent complied with appellants' demands, because under both the federal and state law respondent is specifically enjoined from influencing its employees in their choice of a union or their representatives.

Respondent's employees have refused to join appellant union; they formed a union of their own without any aid, assistance, suggestion or interference on the part of the respondent. They have unanimously selected their own representatives, likewise without any interference, suggestion or participation on the part of respondent. This right of employees to so act is assured by the Norris-LaGuardia Act and by Section 268.18 of the Wisconsin Statutes. Both acts specifically provide that employees "shall be free from the interference, restraint or coercion of the employers of labor, or their agents, in the designation of representatives or in self-organization or in their concerted activities for the purpose of collective bargaining or other mutual aid or protection."

These declarations establish rights of employees which the courts will protect by injunction.

Texas & N. O. R. Co. vs. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, 569, 50 Sup. Ct. 427, 433.

Trustees of Wisconsin State Federation of Labor vs. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N. W. 56.

Respondent's right to carry on its business is a property right which the courts will protect by injunction against interference committed without just cause or excuse.

Truax vs. Corrigan, 257 U. S. 312, 354, 42 Sup. Ct. 124.

Plaintiff's business is a property right.

Duplex Printing Press Co., vs. Deering, 254 U. S. 443, 465, 41 Sup. Ct. 172, 65 L. Ed. 349.

and free access for employees, owner and customers to his place of business is incident to such right.

It is well settled that no just cause or excuse for picketing can be found outside of the field of employer-employee relationship, and within that field its use can only be justified as an aid of a legitimate or lawful end.

Parker Paint & Wall Paper Co. vs. Local Union No. 813, 87 W. Va. 631, 105 S. E. 911, 915.

III.

No "labor dispute" within the meaning of Section 13 of the Norris-LaGuardia Act exists in this case. No labor dispute can arise out of the refusal of the employer to do that which is unlawful. The provisions of the Norris-LaGuardia Act restricting jurisdiction apply only to cases involving labor disputes, and hence have no application in

the instant case. The requirement of Section 7 of that act that specific findings of fact be made applies only to cases involving labor disputes, and hence is inapplicable here for the same reason the provision of the Act which requires respondent to exercise every reasonable effort to settle the dispute is inapplicable here.

No "labor dispute" within the meaning of the Norris-LaGuardia Act can exist in the absence of a controversy between an employer and his employees or a demand by members of the craft of an employer to perform some lawful duty for the benefit of the craft. It should be held that no labor dispute can arise out of the refusal of the employer to do that which is unlawful. Appellants make no attempt to show any justification or excuse for picketing except the claim that the picketing is protected from interference by reason of the Norris-LaGuardia Act. This contention is untenable as Congress has expressly declared as a matter of public policy the right of the employee to be free from restraint and coercion of every kind. It should not be presumed that Congress has withdrawn from the federal courts power and jurisdiction to protect that right.

Takoa Ozawa vs. U. S., 43 Sup. Ct. 65, 67, 260 U. S. 178, 194.

The Norris-LaGuardia Act itself specifically provides its own rule of construction by providing (29 U. S. C. A. Sec. 102):

> *"In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is hereby declared as follows:*
>
> "* * * though he (the employee) should be free to decline to associate with his fellows, it is necessary

> that he have full freedom of association, self-organization, and designation of representatives of his own choosing, * * * and that he shall be free from the interference, restraint, or coercion of employers * * *; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted" (Italics ours).

In the case at bar the wrongful acts enjoined were not done in furtherance of the employees' organization or bargaining activities. The appellants were violating the right given to the employees by the very act itself. It should not be successfully contended that Congress in creating certain rights in employees withdrew from the courts the powers and jurisdiction necessary for the protection of those rights, or that Congress declared a rule of public policy and at the same time prohibited the courts from enforcing it.

The Circuit Court of Appeals of the Seventh Circuit in its decision discusses the intent and purpose of the Act, and we submit places the correct construction upon it. It clearly appears from the legislative history of the Act that Congress intended the term "labor dispute" to embrace, and the provisions restricting jurisdiction to be applicable to, only those cases in which a dispute between an employer and his employees existed. The only purpose of Congress in providing Section 13 of the Act that persons not in the proximate relationship of employer and employee could be parties to a labor dispute, was to authorize those not standing in such relationship to assist the employee in its disputes with its employer, an assistance which had been denied the employee in *Duplex Printing Press Co. vs. Deering*, 254 U. S. 443, 41 Sup. Ct. 172. This intent clearly appears from the report of the House Committee on Judiciary favorably reporting the bill a few days before its passage. That

report, quoted from extensively in *Cinderella Theater Co. vs. Sign Writers' Local Union,* 6 Fed. Supp. 164, recited:

"In the case of Duplex Printing Press Co. vs. Deering, (254 U. S. 443, 41 Sup. Ct. 172, 65 L. Ed. 349, 16 A. L. R. 196), decided January 3, 1921, and being a six-to-three decision, the Court held so far as pertinent to this particular discussion, that this section of the Clayton Act provided a restriction upon the use of the injunctions in favor only of the immediate disputants *and that other members of the union not standing in the proximate relation of employer and employee could be enjoined. Of course, it is fundamental that a strike is generally an idle gesture if confined only to the immediate disputants.* This is intended to be remedied by the later provision in this act defining the meaning of the term 'person participating in a labor dispute', as to whom, as in the bill defined, the courts are deprived of jurisdiction to issue injunctions in the specified instances set forth in this section * * *.

"Section 13 contains definitions which speak for themselves. It is hardly necessary to discuss them other than to say that these definitions include, as hereinabove stated, a definition of a person participating in a labor dispute which is broad enough *to include others than the immediate disputants* and thereby corrects the law as announced in the case of Duplex Printing Press Co. vs. Deering, supra, wherein the Supreme Court reversed the Circuit Court of Appeals (252 F. 722) and held that the inhibition of Section 20 of the Clayton Act (29 U. S. C. A., Sec. 52) only related to those occupying the position of employer or employee and no others. The Supreme Court held to the same effect in the case of the Ameri-

can Steel Foundries Co. vs. Tri-State Central Trades Council (257 U. S. 184, 42 Sup. Ct. 72, 66 L. Ed. 189, 27 A. L. R. (360), supra" (Italics ours).

This intent also appears from the Senate Committee report, quoted from in the same case (6 Fed. Supp. 170):

> " 'Section 13 of the bill defines various terms used in the act, and it is not believed that any criticism has been or will be made to these definitions. In order that the limitations may not be whittled away by refined definitions *of what persons are to be regarded as legitimately involvel in labor disputes,* the bill undertakes specifically to designate those persons who are entitled to invoke the protection of the procedure required' " (Italics ours).

It will be observed that the committee reports assume without comment that a labor dispute can only be a controversy between an employer and his employees; and that Congress did not intend to enlarge this definition to include controversies fomented by outsiders seeking to interfere in a harmonious employer-employee relationship, but only intended to give legal sanction to the aid which those not a party to the relationship might give to the "immediate disputants." In order to enjoy the status of a disputant under the Act, a person must be either an employee or one who is aiding the employee in the couse of action which he has voluntarily elected to pursue. *29 U. S. C. A., Sec. 113 (c)* provides that the term "labor dispute" includes "any controversy concerning the terms or conditions of employment, or concerning the association or representation of persons in negotiating" the terms of employment. This means any controversy between an employer on the

one hand, and his employees and their chosen representatives on the other. In the absence of a controversy between employer and employee, there can be no "labor dispute" within the meaning of the Act.

Beyond this, the expression "any controversy" must sooner or later be limited in its meaning to any controversy having a lawful subject matter. It cannot be held that Congress intended, for example, that a "labor dispute" could be created by employees demanding that an employer surrender his property and business to them as a condition of employment; or by a professional labor organizer demanding that an employer replace all his employees with men whom the organizer represents; or by a professional agitator demanding, over the unanimous protests of the employees, that tribute be paid to him; or that he be accepted as the "sole" representative of the men.

So far as the "right" of intermeddlers to foment a "labor dispute" is concerned, it must be borne in mind that the Norris-LaGuardia Act was designed solely to promote and foster the interests of the employees; they, and they alone, are the subjects of solicitude. The Act was not designed to promote the objects of any particular group of labor organizers, whether they be affiliated with the A. F. of L., the various communistic organizations, or any of the many independents that have for years existed. It obviously was not intended to promote the type of labor racketeering and exploitation which has developed in this country and which finds its most vicious expression in compelling employers and employees, over their united protests, to accept the racketeer as the "representative" of the men. Coercion of this kind has been among the most disgraceful aspects of our recent economic life. Certainly Congress did not intend to encourage it, or to restrict the jurisdiction and power of the courts to protect the employee against it.

Moreover, unless effect be given to the express purpose of Congress by limiting the meaning of the term "labor dispute" to controversies between an employer on the one hand, and his employees and their *chosen* representatives on the other, not only will the employee be exposed to racketeering, but in addition, the employer will be made the helpless victim of the ruthless acts of labor organizers competing for the plum of representation. If the appellants can lawfully do what they have undertaken to do, and if the respondent can be forced to yield to their demands and sign the agreement, then the present association of respondent's employees could with even greater right picket the markets for the purpose of compelling the ouster of the appellants and the reinstatement of the association as representative of the men; and the radical labor groups, the professional labor racketeer, and any other self-styled "representative" of labor could picket and foment disorder to compel the payment to them of some portion of the profits of "representation"; and surely and rapidly the business would be destroyed and the employer left without any redress whatever. It must be remembered that the local labor organization financially able to respond for the damage it inflicts has not yet appeared in our economic life.

The employer in this case is not involved in any dispute of any kind. It stands ready and willing to deal with any bargaining agency which its employees might care to select. It has repeatedly told its employees that they are free to join the appellant union or any other union they choose; that it makes no difference to the employer whatever. Both the officers and the employees so testified (R. 40, 43, 50, 51, 53, 55, 56, 57, 58, 63, 64). The employees of their own volition have refused to join the appellant union because they could not see where it would help them (R. 53, 64, 65); because the appellant union does not do anything for its

members (R. 58); because there was trouble among appellant union's men (R. 53).

If the appellants have any dispute it is with the respondent's men because they refused, in the exercise of their own free choice, to become members of the appellant's union. Since respondent has no controversy with anyone, it is not involved in any "labor dispute," and, therefore, is not within the restrictive provisions of the Norris-LaGuardia Act.

IV.

The trial court has found on sufficient evidence that the appellants, for the purpose of injuring and destroying the business of the complainant, have conspired and concerted to cause, and have caused, false and misleading signs, placards and banners to be placed before the complainant's meat markets, have falsely accused the complainant of being unfair to organized labor in its dealings with its employees, and have prevented patrons and prospective patrons of the complainant from patronizing the meat markets by molestation, annoyance, threats and intimidation causing respondent irreparable damage (Finding of fact 6, R. 7). We believe the Norris-LaGuardia Act has no application for the reasons stated in the preceding chapters, but if the construction urged by the appellant is to be adopted so as to deprive the respondent of effective, equitable relief on the facts of this case, then the Act is unconstitutional as a violation of the due process clause contained in the fifth amendment to the Constitution.

Truax vs. Corrigan, 257 U. S. 312, 42 S. Ct. 124.

The above described acts if committed by anyone other than a labor union, would clearly be subject to restraint by a court of equity. The appellants urge that because their acts relate to a claimed labor dispute, the respondent is not

entitled to injunctive relief under the Norris-LaGuardia Act. As construed by the appellant, the law grants an immunity to a tortfeasor merely because the tort was committed in the assertion of a claimed labor dispute. So construed the act would be arbitrary and unreasonable and would be unconstitutional under the fifth amendment to the Constitution.

Truax vs. Corrigan, 257 U. S. 312, 42 Sup. Ct. 124.

If the Act is to be so construed, it would also be unconstitutional under Article 3, Section 1, of the Constitution which provides that the judicial power of the United States "shall be vested" in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish. Section 2 provides that the judicial power shall extend "to all cases in law and equity * * * between citizens of different states * * *." Although Congress establishes the inferior courts and distributes the jurisdiction among them, the judicial power is derived from the Constitution.

In *Martin vs. Hunter,* 1 Wheat. 304, 328, 14 U. S. 304, 328, the court said:

> "* * * The judicial power of the United States *shall* be vested (not *may* be vested) in one supreme court, and in such inferior courts as congress may, from time to time, ordain and establish * * *. The judicial power must, therefore, be vested in some court, by congress; and to suppose, that it was not an obligation binding on them, but might, at their pleasure, be omitted or declined, is to suppose, that, under the sanction of the constitution they might defeat the constitution itself; a construction which would lead to such a result cannot be sound.
>
> "* * *

"If, then, it is a duty of Congress to vest the judicial power of the United States, it is a duty to vest the whole judicial power. The language, if imperative as to one part, is imperative as to all. If it were otherwise, this anomaly would exist, that congress might successively refuse to vest the jurisdiction in any one class of cases enumerated in the constitution, and thereby defeat the jurisdiction as to all; for the constitution has not singled out any class on which congress are bound to act in preference to others.

"* * * It would seem, therefore to follow, that congress are bound to create some inferior courts, in which to vest all that jurisdiction which, under the constitution, is exclusively vested in the United States, and of which the supreme court cannot take original cognizance. They might establish one or more inferior courts; they might parcel out the jurisdiction among such courts, from time to time, at their own pleasure. But the whole judicial power of the United States should be, at all times, vested, either in an original or appellate form, in some courts created under its authority."

The Norris-LaGuardia Act merely relates to relief which shall be given in cases involving labor disputes. It does not oust the federal courts from jurisdiction to hear and determine such cases.

This action was properly commenced in federal court because of the diversity of citizenship, and the evidence introduced establishes a right to equitable relief. In that situation, to construe the Norris-LaGuardia Act to deprive the federal courts of the power to grant otherwise appropriate equitable relief would amount, we believe, to granting jurisdiction, but withholding the power to grant relief.

Although the limitations upon the power of Congress to regulate federal courts have never been precisely defined by this court, it is plain that there are certain attributes inherent in the judicial power and inseparable from it which can neither be abrogated nor rendered practically inoperative.

Michaelson vs. U. S., 266 U. S. 42, 66, 45 S. Ct. 18, 20, 68 L. Ed. 192, 35 A. L. R. 451.

To confer jurisdiction upon a lower federal court to hear controversies such as this but deny the power to grant appropriate equitable relief to which the litigants are entitled under the law, would be an unconstitutional limitation upon the judicial power of the court. The construction urged by the appellant would, we believe, have that effect.

If the Norris-LaGuardia Act is construed to prohibit equitable relief by way of injunction on the facts of this case, we submit that it would be unconstitutional because it deprives the plaintiff of its property without due process of law and would make an unreasonable and arbitrary classification and would be an unconstitutional limitation upon the judicial power of the federal courts.

CONCLUSION.

We respectfully submit that the Circuit Court of Appeals has correctly decided the case and should be affirmed.

Respectfully submitted,

WALTER L. GOLD,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 293.—October Term, 1937.

Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, Petitioners,
vs.
E. G. Shinner & Co., Inc.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 28, 1938.]

Mr. Justice Roberts delivered the opinion of the Court.

This is a suit to restrain the petitioners from picketing the respondent's place of business; from coercing the respondent to discharge any of its employes who do not belong to the petitioning union, or to compel them to become members of the union and to accept it as their bargaining agent and representative; and from advertising that the respondent is unfair to organized labor or molesting customers or prospective customers or persuading them to cease patronizing it. After a hearing, and upon findings of fact and conclusions of law, the District Court granted a preliminary injunction. The Circuit Court of Appeals affirmed.[1] Upon final hearing the parties relied upon the record as made in the preliminary hearing and some additional testimony.

The District Court found the following facts: The respondent is a Delaware corporation maintaining five meat markets in Milwaukee, Wisconsin. The petitioners are, respectively, an unincorporated labor union and its business manager, citizens and residents of Wisconsin. The respondent's employees number about thirty-five; none of them are members of the petitioning union. The petitioners made demand upon the respondent to require its employes, as a condition of their continued employment, to become members of the union. The respondent notified the employes that they were free to do this and that it was willing to permit them to join but they declined and refused to join. The

[1] Lauf *v.* Shinner & Co., 82 F. (2d) 68.

union had not been chosen by the employes to represent them in any matter connected with the respondent. For the purpose of coercing the respondent to require its employes to join the union and to accept it as their bargaining agent and representative, as a condition of continued employment, and for the purpose of injuring and destroying the business if the respondent refused to yield to such coercion, the petitioners conspired to do the following things and did them: They caused false and misleading signs to be placed before the respondent's markets; caused persons who were not respondent's employes to parade and picket before the markets; falsely accused respondent of being unfair to organized labor in its dealings with employes, and, by molestation, annoyance, threats, and intimidation prevented patrons and prospective patrons of respondent from patronizing its markets; respondent suffered and will suffer irreparable injury from the continuance of the practice and customers will be intimidated and restrained from patronizing the stores as a consequence of petitioners' acts. There is more than $3,000 involved in the controversy.

The District Court held that no labor dispute, as defined by federal or state law, exists between the respondent and the petitioners or either of them; that the respondent is bound to permit its employes free agency in the matter of choice of union organization or representation; and that the respondent had no adequate remedy at law. It entered a final decree enjoining the petitioners from seeking to coerce the respondent to discharge any of its employes for refusal to join the union or to coerce the respondent to compel employes to become members of the organization, from advertising that the respondent is unfair to organized labor, and from annoying or molesting patrons or persuading or soliciting customers, present or prospective, not to patronize the respondent's markets.

The Circuit Court of Appeals affirmed the decree.[2] By reason of alleged conflict with a decision of the Supreme Court of Wisconsin, and with our decision in *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, we granted the writ of certiorari.

In the Court of Appeals the petitioners assigned error to certain of the District Court's findings of fact as well as to its conclusions of law. In this court the only errors assigned are to the holdings

[2] 90 F. (2d) 250.

that, on the facts found, there was no labor dispute and that the Norris-LaGuardia Act and the Wisconsin Labor Code had no bearing on the case as made. In these circumstances we accept the findings of fact and confine our inquiry to the correctness of the district court's conclusions based upon them.

The institution of the suit in the federal court is justified by the findings as to diversity of citizenship and the amount in controversy. As the acts complained of occurred in Wisconsin the law of that State governs the substantive rights of the parties. But the power of the court to grant the relief prayed depends upon the jurisdiction conferred upon it by the statutes of the United States.

First. The District Court erred in holding that no labor dispute, as defined by the law of Wisconsin, existed between the parties. Section 103.62, paragraph (3) of the Wisconsin Labor Code,[3] is:

"The term 'labor dispute' includes any controversy concerning the terms and conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, or concerning employment relations or any other controversy arising out of the respective interests of employer and employe, regardless of whether or not the disputants stand in the proximate relation of employer and employe."

The District Court was bound by the construction of the section by the Supreme Court of the State,[4] which has held a controversy indistinguishable from that here disclosed to be a labor dispute within the meaning of the statute.[5]

Second. The District Court erred in not applying the provisions of Section 103.53[6] of the Wisconsin Labor Code, which declares certain conduct lawful in labor disputes; *inter alia* "giving publicity to . . . the existence of, or the facts involved in, any dispute . . . by . . . patrolling any public street . . . without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;" advising, urging, or inducing, without fraud, violence or threat thereof, others to cease to patronize any person; peaceful picketing or patrolling, whether singly or in numbers. A Wisconsin court could

[3] Wisconsin Statutes, 1937, chap. 103, § 103.62.

[4] Senn *v.* Tile Layers Union, *supra*, p. 477.

[5] American Furniture Co. *v.* Chauffeurs, Teamsters and Helpers Union, 222 Wis. 338, 268 N. W. 250. See, also, Senn *v.* Tile Layers Union, *supra*.

[6] Wisconsin Statutes, 1937, Chap. 103, § 103.53.

not enjoin acts declared by the statute to be lawful;[7] and the District Court has no greater power to do so. The error into which the court fell as to the existence of a labor dispute led it into the further error of issuing an order so sweeping as to enjoin acts made lawful by the State statute. The decree forbade all picketing, all advertising that the respondent was unfair to organized labor and all persuasion and solicitation of customers or prospective customers not to trade with respondent.

Third. The District Court erred in granting an injunction in the absence of findings which the Norris-LaGuardia Act[8] makes prerequisites to the exercise of jurisdiction.

Section 13 (c) of the Act[9] is:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of the persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether or not the disputants stand in the proximate relation of employer and employe."

This definition does not differ materially from that above quoted from the Wisconsin Labor Code, and the facts of the instant case bring it within both.

Section 7[10] declares that "no court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined" except after a hearing of a described character, "and except after findings of fact by the court, to the effect (a) that unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained" and that no injunction "shall be issued on account of any threat or unlawful act excepting against the person or persons, association or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same . . ." By subsections (b) to (e) it is provided that relief shall not be granted unless the court finds that substantial and irreparable injury to complainants' property will follow; that as to each item of relief granted greater injury will be inflicted upon the complainant by

[7] Senn v. Tile Layers Protective Union, 222 Wis. 383, 400, 268 N. W. 270, 872; American Furniture Co. v. Chauffeurs, Teamsters and Helpers Union, *supra*.

[8] Act of March 23, 1932, c. 90, 47 Stat. 70, U. S. C. Tit. 29, § 101 *et seq.*

[9] 47 Stat. 73; U. S. C. Tit. 29, § 113 (c).

[10] 47 Stat. 71; U. S. C. Tit. 29, § 107.

denying the relief than will be inflicted upon defendants by granting it; that complainant has no adequate remedy at law; and that the public officers charged with the duty to protect complainants' property are unable or unwilling to provide adequate protection. There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States.[11] The District Court made none of the required findings save as to irreparable injury and lack of remedy at law. It follows that in issuing the injunction it exceeded its jurisdiction.

Fourth. The Court of Appeals erred in holding that the declarations of policy in the Norris-LaGuardia Act and the Wisconsin Labor Code to the effect that employes are to have full freedom of association, self-organization, and designation of representative of their own choosing, free from interference, restraint or coercion of their employers, puts this case outside the scope of both acts since respondent cannot accede to the petitioners' demands upon it without disregarding the policy declared by the statutes. This view was expressed in the court's first opinion on the appeal from the issue of an interlocutory injunction,[12] and the opinion on the appeal from the final order adopts what was said on the earlier appeal as the law of the case. We find nothing in the declarations of policy which narrows the definition of a labor dispute as found in the statutes. The rights of the parties and the jurisdiction of the federal courts are to be determined according to the express provisions applicable to labor disputes as so defined.

Fifth. Since the courts below were of opinion that a labor dispute, as defined by state and federal statutes, had not been shown, they did not pass on the questions of the legality, under the Wisconsin law, of the acts charged to have been done by the petitioners or the constitutionality of that law in legalizing any of such acts. As the case must go back for further proceedings, we express no opinion upon these questions.

The judgment is reversed and the cause remanded to the District Court for further proceedings in conformity with this opinion.

So ordered.

Mr. Justice CARDOZO and Mr. Justice REED took no part in the consideration or decision of this case.

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[11] Kline v. Burke Construction Co., 260 U. S. 226, 233-234.

[12] 82 F. (2d) 68, 72-73.

SUPREME COURT OF THE UNITED STATES.

No. 293.—October Term, 1937.

Edward Lauf and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 73, Petitioners,

vs.

E. G. Shinner & Co., Inc.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 28, 1938.]

Mr. Justice Butler, dissenting.

The opinion just announced reflects faithfully though quite nakedly the findings of fact. These and uncontradicted details disclose the circumstantial basis of the suit. Local No. 73 is an unincorporated labor union, never in any way related to respondent. None of its employees is a member of the union; all have definitely rejected the suggestion that they join it. In every legal sense, the union is a stranger both to respondent and its employees. Shortly before petitioners conspired to destroy respondent's business, one Joyce, of the American Federation of Labor, called by telephone respondent's vice-president, Russell, at his Chicago office. The latter's uncontradicted narration of the conversation follows: "Mr. Joyce . . . said 'We are in Milwaukee and want you fellows to join our Union up there. They tell me up there you are the man I must see, to get a contract signed for Shinner & Company with the Butchers Union up there.' I told him I could not sign any contract with him, that our men had their own association and were perfectly well satisfied, and didn't want to belong to any other union. He said 'Well, I am going there tonight and if you don't join I will declare war on you.' I said 'There is nothing I can do about it.' He said 'All right, the war is on, and may the best man win,' and he hung up."

Then followed *a demand by the union that respondent compel its employees, on pain of dismissal from their employment, to join the union and constitute it their bargaining representative and agent.* Respondent rightly declined to undertake any such interference with the liberty of its employees, but informed them that they were

free to do as they saw fit. It left them wholly free to join or not to join the union; the union was left free to invite, urge, persuade or induce them to join. Every one who respects the lawful exercise of individual liberty of action must regard the attitude of the respondent as being above criticism and beyond reproach. The opinion of the Court just announced does not suggest a contrary view.

Under these circumstances, the union, in order to force respondent to coerce its employees, and in pursuance of a conspiracy to that end, publicly and falsely accused respondent of being unfair to labor in dealing with its employees; and by means of false placards and banners and by picketing, molestation, annoyance, threats and intimidation it prevented, and when this suit was brought was continuing to prevent, patrons and prospective patrons from dealing with respondent—all to the latter's serious and irreparable injury.

1. Respondent's business constitutes a property right; and the free opportunity of respondent and its customers to deal with one another in that business is an incident inseparable therefrom. It is hard to imagine a case which more clearly calls for equitable relief; and the court below rightly granted an injunction. *Truax* v. *Corrigan*, 257 U. S. 312, 327, and cases cited.

But here it is held that the decree conflicts with the Norris-La Guardia Act. That the action demanded by petitioners of respondent with respect to its employees, if taken, would have been morally indefensible is plain; that it would have been against the declared policy of the Act is equally plain. That Act, 29 U. S. C., § 102,[1] declares that under prevailing conditions, the individual unorganized worker, "though he should be free to decline to associate with his fellow workers" should "have full freedom of asso-

[1] Section 2 of the Act of March 23, 1932, 47 Stat. 70, 29 U. S. C. § 102:

"Public policy in labor matters declared. In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-

ciation, self-organization, and designation of representatives of his own choosing," and should "be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives," etc. This declaration of policy, as the introductory clause plainly recites, was intended as an aid "in the interpretation" of the Act and "in determining the jurisdiction and authority of the courts" under the Act. If respondent had joined the conspiracy and yielded to the demand of the union its action as an employer of labor unquestionably would have constituted an "interference, restraint, or coercion" of its employees in the designation of their representatives, in the teeth of the declared policy of the Act.

The opinion of the Court asserts, however, that this definite declaration of policy in no way narrows the definition of the phrase "labor dispute" found in substantive provisions of the Act. But that statement cannot be intended to suggest that the declaration of policy does not affect the meaning and application of the words used, for the opening clause of that declaration is precisely to the contrary. Whether a labor dispute exists in a given case depends upon the facts; and in each case the phrase "labor dispute" is to be interpreted in harmony with the declared policy of the Act. That is the congressional mandate and courts are required to observe it. In *Ozawa* v. *United States*, 260 U. S. 178, 194, we said "It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail." See also to the same effect, *Heydenfeldt* v. *Daney Gold, etc. Co.*, 93 U. S. 634, 638; *Holy*

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organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, of their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are hereby enacted."

Trinity Church v. *United States*, 143 U. S. 457, 459 *et seq.*; *Fleischmann Co.* v. *United States*, 270 U. S. 349, 360; *Karnuth* v. *United States*, 279 U. S. 231, 243. The principle applies here with peculiar force; for it is an unnatural assumption to suppose that Congress intended by general definition of the flexible term "labor dispute" to annul its own very explicit declaration in respect to the policy to be observed by the courts in the administration of the Act.

The decision just announced ignores the declared policy of Congress that the worker should be free to decline association with his fellows, that he should have full freedom in that respect and in the designation of representatives, and especially that he should be free from interference, restraint, or coercion of employers. To say that a "labor dispute" is created by the mere refusal of respondent to comply with the demand that it compel its employees to designate the union as their representative unmistakably subverts this policy and consequently puts a construction upon the words contrary to the manifest congressional intent.

Moreover, the immediately preceding section of the Act, 29 U. S. C., § 101,[2] provides that no restraining order or injunction in a case involving or growing out of a labor dispute shall issue "contrary to the public policy declared in this chapter." Sections 101 and 102 taken together constitute nothing less than an expression of the legislative will that the court shall enforce the public policy set forth in § 102 and shall have regard thereto in reaching a determination as to whether it has jurisdiction to issue an injunction in any particular case. Since the whole aim of the injury here inflicted and threatened to be inflicted by the union was to compel respondent to influence and coerce its employees in the designation of their representatives, the acts of the union were in plain defiance of the declared policy of Congress, and find no support in its substantive provisions.

2. But putting aside the congressional declaration of policy as an indication of meaning, and considering the phrase entirely

[2] Section 1 of the Act of March 23, 1932, 47 Stat. 70, 29 U. S. C. § 101:
"Issuance of restraining orders and injunctions; limitation; public policy. No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter."

apart, the facts of this case plainly do not constitute a "labor dispute" as defined by the Act. Undoubtedly "dispute" is used in its primary sense as meaning a verbal controversy involving an expression of opposing views or claims. The Act itself, 29 U. S. C., § 113 (c), so regards it: "The term 'labor dispute' includes any controversy concerning terms or conditions of employment," etc. In this case, there was no interchange or consideration of conflicting views in respect of the settlement of a controversial problem. There was simply an overbearing demand by the union that respondent should do an unlawful thing and a natural refusal on its part to comply. If a demand by a labor union that an employer compel its employees to submit to the will of the union, and the employer's refusal, constitute a labor controversy, the highwayman's demand for the money of his victim and the latter's refusal to stand and deliver constitute a financial controversy.

There being an utter lack of connection between the petitioners and respondent or its employees, the union was an intruder into the affairs of the employer and its employees. The union had the right to try to persuade the employees to join its organization; but persuasive methods failing, its right under the law in any manner to intermeddle came to an end. It lawfully could not coerce the employees to abandon their own organization and to join Local No. 73 any more than the employees could coerce the union to disband and its members to join their organization. Otherwise, the worker would not "be free," as the Act requires, "to decline to associate with his fellows"; nor would he have "full freedom of association, self-organization and designation of representatives of his own choosing." Clearly the union could not be authorized by statute to resort to coercive measures *directly* against the employees to compel submission to its wishes, for that would be to give one group of workmen autocratic power of control in respect of the liberties of another group, in contravention of the Fifth Amendment as well as of the policy of Congress expressly declared in this Act. And that being true, the attempt to coerce submission through constrained interference of the employer was equally unlawful.

So far as concerns the question here involved, the phrase "labor dispute" is the basic element of the Act. For unless there was such a dispute—that is to say, a "controversy"—the Act does not

even purport to limit the district court's jurisdiction in equity. The phrase must receive a sensible construction in harmony with the congressional intent and policy. There can be no dispute without disputants. Between whom was there a dispute here? There was none between the union and respondent's employees; for the latter were considered by the union mere pawns to be moved according to the arbitrary will of the union. There was none between respondent and its employees; for they were in full accord. And finally there was none between the union and respondent; for it would be utterly unreasonable to suppose Congress intended that the refusal of a conscientious employer to transgress the express policy of the law should constitute a "labor dispute" having the effect of bringing to naught not only the policy of the law, but the obligation of a court of equity to respect it and to restrain a continuing and destructive assault upon the property rights of the employer, as to which no adequate remedy at law existed.

3. As to what constitutes a "labor dispute" within the meaning of the Wisconsin statute, the interpretation put upon it by the highest court of that state is binding here. *Knights of Pythias* v. *Meyer*, 265 U. S. 30, 32. *Morehead* v. *N. Y. ex rel Tipaldo*, 298 U. S. 587, 609. But this Court authoritatively declares the meaning of Acts of Congress and is required to decide for itself what constitutes a "labor dispute," which, within the meaning of the Norris-La Guardia Act, will have the effect of abridging the jurisdiction of a federal court.

The things here found to have been done for the purpose of coercing respondent to compel its employees to join the union are not declared lawful by the Wisconsin statute or by the courts of that state. Cf. *American Furn. Co.* v. *I. B. of T., C. etc.*, 222 Wis. 338; *Senn* v. *Tile Layers Protective Union*, 222 Wis. 383. While this Court refrains from condemning the means employed by petitioners, the opinion contains nothing to suggest that their conduct was not wrongful and unlawful. The publicity and peaceful picketing declared legal by Wisconsin laws are utterly unlike the display of libelous signs, parade of pickets, false accusations, molestation, threats and intimidation employed by the union, not on behalf of former or present employees of respondent, but to destroy the business of respondent. Here, by means everywhere held to be unlawful, the union carried on and was continuing to carry on a campaign of de-

struction in order to coerce respondent to deprive its employees of their right of freedom of association, self-organization and designation of representatives of their own choosing. That the Wisconsin statute does not attempt to make lawful the means employed by the union to impose its will upon respondent and its employees clearly appears from this Court's portrayal of that law in *Senn* v. *Tile Layers Union*, 301 U. S. 468.

The opinion in that case states (p. 478): "The judgment of the highest court of the state establishes that both the means employed and the end sought by the unions are legal under its law . . . The Legislature of Wisconsin has declared that 'peaceful picketing and patrolling' on the public streets and places shall be permissible 'whether engaged in singly or in numbers' provided this is done 'without intimidation or coercion' and free from 'fraud, violence, breach of the peace or threat thereof.' The statute provides that the picketing must be peaceful; and that term as used implies not only absence of violence but absence of any unlawful act. It precludes the intimidation of customers. It precludes any form of physical obstruction or interferenee with the plaintiff's business. It authorizes giving publicity to the existence of the dispute 'whether by advertising, patrolling any public streets or places where any person or persons may lawfully be'; but precludes misrepresentation of the facts of the controversy. And it declares that 'nothing herein shall be construed to legalize a secondary boycott.' . . . Inherently, the means authorized are clearly unobjectionable. In declaring such picketing permissible Wisconsin has put this means of publicity on a par with advertisements in the press. . . . The picketing was peaceful. The publicity did not involve a misrepresentation of fact; nor was any claim made below that relevant facts were suppressed."

The state statute, defining "labor disputes" and declaring the means that lawfully may be used against employers in such controversies, does not purport to make lawful either the end here sought by petitioners or the means they employed to attain it. Their purpose was not unionization of respondent's employees, for they already belonged to a labor organization of their own choosing. The purpose was to coerce the employees to join a particular organization which they had already repudiated. There is nothing in the state or federal statutes that purports to give labor unions

or individuals so contriving the status of party to a "labor dispute." Coercion of employees to surrender their freedom of self-organization is repugnant to both statutes. Wis. Laws, 1935, c. 551, § 5. 29 U. S. C. §§ 101, 102. Cf. *American Furniture Co.* v. *I. B. of T. C. etc.*, 222 Wis. 338; *Senn* v. *Tile Layers Protective Union*, 222 Wis. 383; *Senn* v. *Tile Layers Union*, 301 U. S. 468. There is no ground upon which petitioners' purpose in this case or the means employed to accomplish it can be supported as lawful.

4. The case is a simple one. Respondent's employees had no connection with the union, and were unwilling to have any. The union, being unable to persuade the employees to assent to its wishes in that regard, undertook to subjugate them to its will by coercing an unlawful interference with their freedom of action on the part of the employer. If that is a "labor dispute," destructive of the historical power of equity to intervene, then the Norris-La Guardia Act attempts to legalize an arbitrary and alien state of affairs wholly at variance with those principles of constitutional liberty by which the exercise of despotic power hitherto has been curbed. And nothing is plainer under our decisions than that if the Act does that, its effect will be to deprive the respondent of its property and business without due process of law, in contravention of the Fifth Amendment. *Truax* v. *Corrigan, supra*, 327-328.

I am of opinion that the circuit court of appeals rightly held that this case discloses no "labor dispute" within the meaning of the Norris-La Guardia Act; that the union's coercive attack upon respondent was unlawful under state law and in violation of the policy declared by the federal statute, and was properly enjoined; and that, there being no "labor dispute" as defined by that Act, its provisions as to allegations, proof, and findings do not apply. I would affirm the judgment.

Mr. Justice McReynolds concurs in this opinion.